

EXPERT DISCOVERY AMENDMENTS

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Gordon E. Snow

AN ACT RELATING TO THE UTAH CODE OF CRIMINAL PROCEDURE; AMENDING EXPERT DISCOVERY PROVISIONS FOR EXPERT TESTIMONY AT A PRELIMINARY HEARING.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

77-17-13, as enacted by Chapter 139, Laws of Utah 1994

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **77-17-13** is amended to read:

77-17-13. Expert testimony generally -- Notice requirements.

(1) (a) If the prosecution or the defense intends to call any expert to testify in a felony case at trial or any hearing, excluding a preliminary hearing held pursuant to Rule 7 of the Utah Rules of Criminal Procedure, the party intending to call the expert shall give notice to the opposing party as soon as practicable but not less than 30 days before trial or ten days before the hearing.

(b) Notice shall include the name and address of the expert, the expert's curriculum vitae, and a copy of the expert's report.

~~[(b)]~~ ~~(2)~~ (a) The expert shall prepare a written report relating to the proposed testimony.

(b) If the expert has not prepared a report or the report does not adequately inform concerning the substance of the expert's proposed testimony including any opinion and the bases and reasons of that opinion, the party intending to call the expert shall provide to the opposing party a written explanation of the expert's anticipated testimony sufficient to give the opposing party adequate notice to prepare to meet the testimony, followed by a copy of any report prepared by the expert when available.

~~[(2)]~~ ~~(3)~~ (a) As soon as practicable after receipt of the expert's report, the party receiving notice shall provide ~~[notice]~~ to the other party notice of witnesses whom the party anticipates calling to rebut the expert's testimony, including the name and address of any expert witness and

the expert's curriculum vitae. If available, a report of any rebuttal expert shall be provided to the other party.

(b) If the rebuttal expert has not prepared a report or the report does not adequately inform concerning the substance of the expert's proposed testimony, or in the event the rebuttal witness is not an expert, the party intending to call the rebuttal witness shall provide a written explanation of the witness's anticipated rebuttal testimony sufficient to give the opposing party adequate notice to prepare to meet the testimony, followed by a copy of any report prepared by any rebuttal expert when available.

~~[(3)]~~ (4) (a) If the defendant or the prosecution fails to meet the requirements of this section, the opposing party shall be entitled to a continuance of the trial or hearing sufficient to allow preparation to meet the testimony.

(b) If the court finds that the failure to comply with this section is the result of bad faith on the part of any party or attorney, the court shall impose appropriate sanctions.

(5) (a) For purposes of this section, testimony of an expert at a preliminary hearing held pursuant to Rule 7 of the Utah Rules of Criminal Procedure constitutes notice of the expert, the expert's qualifications, and a report of the expert's proposed trial testimony as to the subject matter testified to by the expert at the preliminary hearing.

(b) Upon request, the party who called the expert at the preliminary hearing shall provide the opposing party with a copy of the expert's curriculum vitae as soon as practicable prior to trial or any hearing at which the expert may be called as an expert witness.